

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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BUREAU OF CONSUMER FINANCIAL PROTECTION,	:	Case No. 1:21-cv-262
	:	
Plaintiff,	:	<b>Telephone Status Conference</b>
	:	
- v -	:	Friday, March 25, 2022
FIFTH THIRD BANK, N.A.,	:	3:45 p.m.
	:	
Defendant.	:	Cincinnati, Ohio

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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

For the Plaintiff:	BARRY REIFERSON, ESQ.
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1 P R O C E E D I N G S

2 (In open court via telephone at 3:52 p.m.)

3 - - -

4 COURTROOM DEPUTY: This is Scott Lang with Judge  
5 Cole's chambers. We're here for a telephone status conference  
6 on case number 1:21-cv-262, Bureau of Consumer Financial  
7 Protection versus Fifth Third Bank.

8 My apologies. Apparently, I put in the wrong security  
9 code, and so people had trouble getting on so, hopefully,  
10 everyone is on the call, but I'm going to take a roll.

11 Who do I have on the line for the plaintiff currently?

12 MR. SCHUNK: Jacob Schunk, with the Consumer  
13 Financial Protection Bureau, along with Ms. Sherman Cater and  
14 Mr. Reiferson.

15 COURTROOM DEPUTY: Is that everyone we should have on  
16 there?

17 MR. SCHUNK: We can certainly start with the three of  
18 us.

19 COURTROOM DEPUTY: What was your last name again?

20 MR. SCHUNK: Jacob Schunk, S-c-h-u-n-k.

21 COURTROOM DEPUTY: How about for defendant, Fifth  
22 Third?

23 MR. SCARBOROUGH: This is Ryan Scarborough. I'm on,  
24 along with my cocounsel, Laurie Witek, and we have Chris  
25 Garvey and Aaron Stucky, who are both in-house lawyers at

1 Fifth Third on as well.

2 COURTROOM DEPUTY: Okay. And for you guys, is  
3 everyone that we need on the call?

4 MR. SCARBOROUGH: Yes. Unfortunately, Mr. Villa is  
5 unable to participate. He tested positive for COVID today and  
6 is feeling under the weather, to put it mildly.

7 COURTROOM DEPUTY: Okay. Sorry to hear that. We'll  
8 go ahead to get started. We do have a court reporter, so we  
9 are recording this.

10 Two quick things before we get started. One, please mute  
11 your phones when you're not speaking; and, two, please  
12 identify yourselves before speaking.

13 Please hold for the Court.

14 THE COURT: Good afternoon, counsel.

15 MR. SCARBOROUGH: Good afternoon, Your Honor.

16 THE COURT: Mr. Scarborough, I believe we're here at  
17 your client's suggestion with regard to an emergency motion  
18 that you filed that, as the Court understands, it is directed  
19 at a survey that CFPB has sent out to some or all of the Fifth  
20 Third customers.

21 It's not clear to the Court how the determined email  
22 after [audio distortion] all those people, nor how widely the  
23 survey had gone out, but I will allow you to explicate your  
24 concerns more fully if you would like at this time.

25 MR. SCARBOROUGH: Thank you, Your Honor. I

1 appreciate that. Let me start by saying I'm truly sorry to  
2 bother the Court, particularly on a Friday afternoon, but we  
3 filed this motion, given the serious nature of the bureau's  
4 actions and the impact that it's having on Fifth Third's  
5 customers.

6 Yesterday afternoon, starting about late in the  
7 afternoon, around 3:00 or 4:00, the bank started receiving  
8 inquiries from customers who were receiving an email survey.  
9 They were confused by it. They didn't know if it was  
10 legitimate, or if it was coming from Fifth Third, and they  
11 clearly were uncertain as to what to do.

12 We took steps to assess what the situation was, and I  
13 reached out to Mr. Reiferson and the other counsel who had  
14 entered an appearance here for the bureau yesterday evening,  
15 shortly after 9:00, to ask them what was going on, and ask  
16 them if they could either confer with me that night or as  
17 early as possible this morning.

18 Ms. Witek and I followed up with calls to them this  
19 morning and didn't receive a call back. Did receive an email  
20 from Mr. Reiferson, of which followed a series of email  
21 exchanges, but he was unable or unwilling to get on with us  
22 and talk today.

23 The issue that we're dealing with, Your Honor, this  
24 really stems back to the August 2021 status conference where,  
25 if you will recall, the parties had disagreed over the scope

1 of discovery in this case.

2 At that time, the bureau had floated the idea --  
3 Mr. Reiferson had floated the idea of going beyond the data  
4 for suspect accounts and actually contacting customers with  
5 indicia of non-authorization. That would have been hundreds  
6 of thousands of the bank's customers.

7 And Mr. Villa objected and said that doing so, that he  
8 couldn't imagine something that would be more prejudicial to  
9 the bank's relationships with its customers than an  
10 indiscriminate mailing to them.

11 After hearing further argument about how the Court should  
12 approach discovery, Your Honor indicated that the parties  
13 should proceed with sampling, and that that would set the  
14 stage for determining any additional discovery needs for this  
15 case.

16 And we came away from that conference with the  
17 understanding that the bureau was going to pick a sample, and  
18 that there wouldn't be a mass communication to the bank's  
19 customers without first consulting with the bank or the Court.

20 We tried to litigate this case on the merits, and to  
21 reach the merits, we filed our motion for judgment on the  
22 pleading. And over the past seven months, we've been giving  
23 the bureau information that they need to pick their sample.  
24 Seven months later, we're still waiting for the bureau to pick  
25 its sample.

1           The bureau, from our perspective, Your Honor, has been  
2           slow rolling the sampling process, while at the same time,  
3           evidently, now they've been planning an elaborate survey that  
4           bears all the hallmarks of a massive email campaign.

5           I don't know, at this point, Your Honor, how many people  
6           received the email. I don't know where they got the  
7           informa- -- the addresses to contact these customers.

8           I have a suspicion that what they have done is they made  
9           a request back in 2018 as part of their civil investigative  
10          demand to the bank that it provide contact information for  
11          millions of bank customers. The bank obviously had no choice  
12          but to comply with that at the time.

13          I suspect, but I don't know, that they utilized the  
14          contact information from that to make this -- to make what  
15          appears to be a mass mailing.

16          I don't know how many customers received the survey. I  
17          don't know what criteria was used to determine the recipients  
18          of the survey. I don't know where they got the customer  
19          information, much less how long the bureau has been developing  
20          this survey, how long the bureau's counsel has known about  
21          this survey, or why they didn't alert the Court or consult  
22          with us before putting out such a prejudicial survey.

23          At this point, Your Honor, we certainly would have been  
24          willing to postpone this hearing until Monday if the bureau  
25          would have disabled the survey and taken it down to at least

1 try to mitigate the harm that has occurred; but, barring that,  
2 we needed to go forward today because we believe that there  
3 needs to be immediate steps taken to try to rectify this.

4 And I understand that with it having already been sent  
5 out, it's difficult to un-ring a bell like that, but this is  
6 incredibly prejudicial. Everything from the way the questions  
7 were framed to the way it was set up, it's incredibly  
8 prejudicial.

9 And to do it knowing full well that we had objected to  
10 this in August of last year, and had established that this  
11 case was going to go forward with sampling before any other  
12 scope of discovery issues were going to be addressed, and to  
13 then see the bureau slow roll the sampling and take these  
14 steps has been not only incredibly disappointing but  
15 incredibly unfair.

16 All we want to do is litigate this case on the merits,  
17 and we have not been able to do that yet because of the  
18 actions that the bureau has taken.

19 THE COURT: Thank you, Mr. Scarborough. I don't know  
20 who is going to speak on CFPB's behalf, but I'd be interested  
21 in hearing your view on it now.

22 MR. SCHUNK: Thank you, Your Honor. And this is  
23 Jacob Schunk for the CFPB. The bureau takes issue with  
24 several of the premises underlying what Mr. Scarborough has  
25 just identified.

1           So I think, for present purposes, though, it's sufficient  
2           to focus on one, which is that the bureau had told the Court  
3           and Fifth Third that it was going to do this.

4           Specifically, in a joint status report from October 15th,  
5           the bureau said, "The bureau also intends to conduct extensive  
6           informal outreach to former employees and consumers during and  
7           without affecting the discovery period."

8           As Fifth Third is well aware, we've been contacting  
9           former employees. We know Fifth Third knows that because we  
10          gave them a list of former employees that we were going to  
11          contact, and they started contacting them.

12          So the fact that we were engaged in the same conduct that  
13          we said we were going to do, and they took no issue -- this is  
14          in October, so after August. They asked no questions. They  
15          didn't say we want a brief appearance. Nothing.

16          And now I think it's likely forgot about that, and is now  
17          coming to the Court with this urgency trying to get the Court  
18          to stop an agency, the federal government, from talking to  
19          consumers in an effort to prove its case.

20          It's unfounded. It's also -- the urgency is not on us,  
21          Your Honor. The urgency is on Fifth Third for not asking more  
22          questions then.

23                 THE COURT: Do you have a docket entry for that,  
24          Mr. Schunk?

25                 MR. SCHUNK: I don't have a docket entry, Your Honor.



1 I think it was emailed from -- Mr. Scarborough signed it on  
2 October 15, 2021. The certificate of service was from Krysta  
3 Gumbiner, Your Honor.

4 THE COURT: Do you know the documents about which  
5 he's speaking, Mr. Scarborough?

6 MR. SCARBOROUGH: Your Honor, I assume what he's  
7 referring to is some sort of a joint status report, that's  
8 what he's described, but I have no specific -- at this time, I  
9 don't have it in front of me.

10 THE COURT: Mr. Schunk, could you email what you just  
11 were referring to?

12 MR. SCHUNK: Excuse me, Your Honor?

13 THE COURT: Could you email the document to which you  
14 were referring to the Court and to Mr. Scarborough?

15 MR. SCHUNK: Yes, Your Honor. Your Honor, I've  
16 located the October status report that was filed.

17 THE COURT: To what page are you referring to,  
18 Mr. Schunk?

19 MR. SCHUNK: Page 15, Your Honor.

20 THE COURT: If someone could forward it to the Court  
21 too so I could take a look at it, I'd appreciate it.

22 Do you see the reference he's making, Mr. Scarborough?

23 MR. SCARBOROUGH: I'm still looking, Your Honor.

24 THE COURT: Scott, can you forward it to me as soon  
25 as it comes into chambers?

1 COURTROOM DEPUTY: Yes, Your Honor.

2 MR. SCARBOROUGH: I have it in front of me, Your  
3 Honor. I've read it now.

4 THE COURT: I still don't have it in front of me, so  
5 I don't know who was going to email it to chambers, but I  
6 don't have it yet.

7 MR. SCHUNK: Sorry, Your Honor. This is Jacob  
8 Schunk. I sent a copy to Mr. Lang and cc'd Mr. Scarborough.

9 THE COURT: Okay. Remind me, you said page 15,  
10 Mr. Schunk?

11 MR. SCHUNK: Yes, Your Honor. The full paragraph  
12 right after the bureau heading.

13 THE COURT: Well, Mr. Scarborough, I see a sentence  
14 that says it "still intends to conduct extensive informal  
15 outreach to former employees and consumers during and without  
16 affecting the discovery period." Do you see that?

17 MR. SCARBOROUGH: Yes. I'm looking at that, Your  
18 Honor. Can I address that?

19 THE COURT: Yes, you may.

20 MR. SCARBOROUGH: Thank you, Your Honor. Your Honor,  
21 this is the height of what I would call the fine print defense  
22 here.

23 This is a 26-page status report that was submitted by the  
24 parties. This was submitted after the bureau already knew  
25 that Fifth Third objected, and had lodged its objection to any

1 sort of -- any sort of mass communication to customers.

2 And to point to this as a justification six months  
3 after -- five to six months after the fact is the height of  
4 fine print.

5 The bureau is an agency that's focused on preventing  
6 unfair, deceptive, abusive conduct. And they quite commonly  
7 point to fine print-type defenses as being unfair or deceptive  
8 or abusive, and that's exactly what's happening here.

9 Your Honor, the whole focus of our informal conferences  
10 over the past six or seven months has been on picking a  
11 sample; that the Court has made it clear that the sample was  
12 going to dictate and guide any additional scope of discovery  
13 that would be determined.

14 And so for it -- and the bureau pushed for far more  
15 accounts, far more than the 3,875 accounts that the Court  
16 ultimately indicated that the parties should proceed with.

17 So for the bureau to turn around -- the rest of discovery  
18 is stayed at this point. For the bureau to turn around and  
19 say we're working on a sample for 3,875, but we're going to  
20 send a mass email -- and, again, I don't know how many of  
21 these customers they sent the email to because they haven't  
22 told us, but it has all the hallmarks of a mass email.

23 And to turn around, after the Court has limited them to  
24 3,875 accounts on a sample, and to send a survey like this to,  
25 I don't know if it's thousands, tens of thousands, hundreds of

1 thousands or more, because we gave them millions of customer  
2 contact information as part of their CI- -- in response to  
3 their CID. For them to turn around and do this, knowing that  
4 we had objected and say, aha, but you never objected a second  
5 time.

6 Your Honor, we don't have to object twice. We objected  
7 the first time it came up. And so then to come around and  
8 say, aha, but you didn't see it in the fine print, you didn't  
9 catch us because you were responding and focusing on the  
10 thrust of the discussions at the time, which was what is the  
11 scope of discovery with sampling, what is the period that  
12 should -- the case management schedule that should govern this  
13 case, and you didn't see and object to a one-sentence  
14 reference in a 26-page document, and that's the hook. That's  
15 a --

16 THE COURT: Well, Mr. Scarborough --

17 [Indiscernible crosstalk.]

18 MR. SCARBOROUGH: -- Your Honor, and that should not  
19 be.

20 THE COURT: Mr. Scarborough --

21 MR. SCARBOROUGH: That should not be. Yes, Your  
22 Honor.

23 THE COURT: Mr. Scarborough, I appreciate what you're  
24 saying. It seems to me it would have a little bit more  
25 persuasive effect if you didn't have the one paragraph

1 response to that very sentence, just to a different portion of  
2 it.

3 I mean, the sentence talks about informal outreach to  
4 former employees and consumers. I see your response -- the  
5 entire second paragraph of your response is, in fact, directed  
6 to that sentence, but it's just directed to the employee part.  
7 Am I missing something?

8 MR. SCARBOROUGH: It is directed to the employee  
9 part, Your Honor, because at that time, we were exchanging  
10 correspondence with Mr. Reiferson, who was indicating  
11 specifically that there were former employees that they wanted  
12 to contact.

13 And we were working with Mr. Reiferson to ensure that he  
14 could contact those folks without implicating any sort of  
15 privilege issues. There was no communication at that time  
16 from Mr. Reiferson that they were going to be contacting  
17 customers.

18 There was no -- the letters that were being exchanged  
19 were focused solely and exclusively on former employees. So  
20 that was the backdrop to this submission that was being made,  
21 because the letters that were being exchanged between  
22 Mr. Reiferson and my partner, Mr. Villa, were about former  
23 employees.

24 We had already objected -- in August, Your Honor, we had  
25 already objected to contacting customers on a mass basis like

1       this.

2               THE COURT: I see. All right. Well, so independent  
3 of any of this, I'm a little disappointed that CFPB would send  
4 out what appears to be a mass emailing without at least  
5 coordinating and giving -- I can only imagine that the folks  
6 at CFPB understood that this may result in a -- I don't know  
7 if deluge is the right word, but at least a substantial number  
8 of customer outreaches to Fifth Third.

9               To just kind of receive an email survey like this that's,  
10 you know, frankly got a lot of the hallmarks of spam, or  
11 phishing expeditions, or other things, so I'm a little  
12 surprised that CFPB would think it was a good idea to just  
13 reach out.

14              I am interested in knowing, Mr. Schunk, how many of these  
15 emails did you send out to Fifth Third clients?

16              MR. SCHUNK: Thanks, Your Honor. At this time, given  
17 the expedited nature of this, I'm just not able to answer  
18 questions regarding the work product of attorneys, which is  
19 what this is, Your Honor. We would need to go up the chain  
20 quite a ways to determine to what extent we're able to answer  
21 those questions.

22              I do have some reaction to Mr. Scarborough, if the Court  
23 would like to hear some of that, though, Your Honor?

24              THE COURT: Well, I'd first like an explanation as to  
25 why you can't answer the question I just asked.

1           MR. SCHUNK: Again, Your Honor, given the expedient  
2 time frame of this, we've not had the time yet to talk to our  
3 supervisors regarding the extent to which we are able and  
4 willing to disclose information regarding the government's  
5 litigation positions.

6           THE COURT: I see. Okay. What else would you like  
7 to say, Mr. Schunk?

8           MR. SCHUNK: Just very briefly, Your Honor. And,  
9 again, I won't belabor this, other than to say that we would  
10 disagree with, if not everything, but most everything  
11 Mr. Scarborough says.

12           Focus on the pertinent points, though. It is not the  
13 bureau's position that we are entitled to do this because of  
14 what we put in the status report.

15           We're entitled to do this because we're the Consumer  
16 Financial Protection Bureau litigating a case against an  
17 entity, and we are able to talk to consumers as part of that  
18 effort. And the cases cited here are all distinguishable for  
19 multiple reasons.

20           But the reason the sentence is important is because it  
21 demonstrates that there's no urgency to this. Fifth Third had  
22 noticed that we were going to do this but, to be clear, we  
23 don't rely on the sentence for doing it, "the right." We have  
24 the right.

25           The point of bringing the [audio distortion] to the

1 Court's attention that perhaps Fifth Third take an issue with  
2 this, they could have and should have done it before now, Your  
3 Honor. That's all.

4 THE COURT: I see. Well --

5 MR. SCARBOROUGH: Your Honor --

6 THE COURT: No, Mr. Scarborough.

7 Let me be clear. I will give CFPB an opportunity to  
8 respond to the motion that's been filed; but, in the interim,  
9 I am ordering that no further emails go out, and that the link  
10 be disabled so that people cannot answer the survey in the  
11 intervening time until the Court's got a better sense of what  
12 CFPB is willing to show the Court about its outreach effort  
13 here, and how broadly this may be impacting Fifth Third's  
14 relationships with its client.

15 I think it was a poor choice to reach out in a manner  
16 that looks to the Court to be designed to create a wedge  
17 between Fifth Third and its customers, without having at least  
18 discussed with Fifth Third how such a survey could be done,  
19 who might be appropriate recipients, and various other aspects  
20 of the survey.

21 You know, this is litigation, but I understand there's,  
22 you know, team A and team B, but that doesn't mean that  
23 parties can't work together collectively during the discovery  
24 process to avoid surprises like the types of surprises coming  
25 up as a result of this what may be or may not be mass email



1 and, apparently, I'm not entitled to know the answer to that  
2 question.

3 But, you know, I just want to be very clear I want it to  
4 stop until the Court's had an opportunity to review whatever  
5 additional information CFPB sees fit to provide.

6 Any questions about that, Mr. Schunk?

7 MR. REIFERSON: Your Honor, this is Barry Reiferson.  
8 I'm sorry, a little background noise. I'm about to board a  
9 plane.

10 I did want to respond a little bit. I don't want the  
11 Court to come away with the idea that we're not willing to  
12 answer the Court's questions, as Mr. Schunk described.

13 What we're being asked to disclose is attorney work  
14 product, and it's difficult for any party, including a  
15 government agency, to do that without authorization to do  
16 that.

17 And, you know, when Mr. Scarborough says this was  
18 discussed and they objected, you may recall that it was  
19 objected to in the context of the joint effort.

20 We said -- we had asked in, you know, pre-litigation  
21 discussions if Fifth Third would be willing to join the bureau  
22 and reach out to hundreds of thousands of consumers in a joint  
23 effort to find the facts. They said no. But that doesn't  
24 mean that the bureau can't do its job in preparing for  
25 litigation without Fifth Third's help. And that's where we

1 are.

2 I take the Court's point that, you know, it's always best  
3 if the parties speak repeatedly, and we do speak repeatedly;  
4 but, you know, Fifth Third has indicated it's not willing to  
5 work with us.

6 We've asked Fifth Third for phone numbers of employees or  
7 former employees that we could contact. They've refused to  
8 give us phone numbers to allow us to do our job. So they  
9 don't work with us, and so we're left to do the job on our  
10 own, without its help.

11 In hindsight, perhaps it would have been better to make  
12 one last effort, but we didn't do that and this is where we  
13 are.

14 I can say the outreach scope or volume was, so far,  
15 significantly lower than the hundreds of thousands that we  
16 spoke about as far as a potential joint effort.

17 THE COURT: I'm pleased to hear that, Mr. Reiferson.  
18 I mean, I'm a little bit surprised to hear Mr. Schunk's  
19 apparent view that, I think he said we're the CFPB so,  
20 essentially, we can do whatever we want.

21 I assume, Mr. Reiferson, that you wouldn't contend that  
22 the CFPB could just pick some bank that it wanted to destroy  
23 all the customer relationships with and just send out mass  
24 mailings to that bank's customers encouraging them to move  
25 elsewhere, right? I assume --

1           MR. REIFERSON: I would agree that the bureau would  
2 not -- the bureau would not attempt to simply pick a bank and  
3 destroy its customer relationship, and we haven't done that  
4 here.

5           THE COURT: Well, but I didn't hear a lot of  
6 boundaries around Mr. Schunk's claim that we're the CFPB so we  
7 can do what we want to.

8           That may well be the case. It's not going to be the case  
9 in this litigation so, you know, I would encourage everybody  
10 to be a little more careful with regard to things like this.

11          I mean, put yourself, Mr. Reiferson, in the position of  
12 the bank, who all of a sudden has got a bunch of customers  
13 calling about what looks like -- honestly, when I look at  
14 these emails, they look like phishing emails of some kind, and  
15 asking questions about emails that they know nothing about.

16          I mean, certainly you can understand that may not be a  
17 very comfortable position for the bank's officer to be in.

18          MR. REIFERSON: I understand, Your Honor. As I said,  
19 in hindsight, we may have done it differently. You know, Your  
20 Honor touched on something the last time we spoke, and that  
21 is, you know, the parties, including the attorneys, have  
22 drifted apart and have kind of become, you know, perhaps  
23 overly adversarial.

24          That was not our goal here; but, you know, we do have a  
25 history with this bank in this litigation. As I said, we

1 asked them just give us phone numbers of people you've already  
2 spoken with, and they won't do that so, you know, we have to  
3 have -- we have to go find phone numbers.

4 So we don't -- the parties have drifted apart. The  
5 lawyers have become adversarial, and that's regrettable, and I  
6 regret it, and I'll try to do better to avoid it in the  
7 future. But that's the context in which this was done, and it  
8 was not intended to --

9 THE COURT: Well, to the extent you've got concerns  
10 and are getting into a tit-for-tat mode, you know, raise your  
11 concerns with the Court. I don't like this either direction.

12 If Fifth Third is making you incur a lot of costs to get  
13 data that they could easily provide you, I'm going to be not  
14 particularly favorably disposed towards that either, but I  
15 don't think that taking matters into your own hands is really  
16 the way to go about litigation, and it's unlikely to bring the  
17 parties more closely together.

18 You know, feel free, when you have disputes, to reach out  
19 to the Court, and the Court will try to do its best to try and  
20 help. But I don't want this to go on until I've got a lot  
21 more information about it, and so I want the effort shut down  
22 for now.

23 MR. REIFERSON: Understood, Your Honor. Your Honor,  
24 of course, you know, if the order the Court deems appropriate,  
25 the bureau would voluntarily, however, break the link,

1 essentially. So my understanding is an email with a link to a  
2 survey, we can replace that for those that have already been  
3 sent out with a sentence, or something along the lines of,  
4 "This survey is closed. Thank you for your time." And we're  
5 willing to do that without a Court order.

6 THE COURT: Mr. Scarborough, is that acceptable?

7 MR. SCARBOROUGH: Your Honor, when would this happen?  
8 Because I'd want to make sure that this gets done as soon as  
9 possible.

10 MR. REIFERSON: I believe the answer is as soon as  
11 possible.

12 [Indiscernible crosstalk.]

13 MR. REIFERSON: Within minutes, I believe.

14 THE COURT: Okay. Go ahead, Mr. Scarborough.

15 MR. SCARBOROUGH: And, Your Honor, I do think it  
16 should be memorialized in an order in some fashion to note  
17 that this is -- because, again, we're going to have -- after  
18 the bureau responds, we're going to have to deal with this  
19 more broadly in terms of any future outreach that is -- that  
20 the bureau intends to make. And, Your Honor, I did want --

21 THE COURT: Mr. Scarborough, I would --

22 MR. SCARBOROUGH: -- to --

23 THE COURT: -- encourage you not to --

24 [Indiscernible crosstalk.]

25 MR. SCARBOROUGH: I'm sorry. That's fine,

1 Your Honor. I appreciate it. I appreciate you taking the  
2 time and making the time for us on a Friday afternoon.

3 I know, from when I clerked, that I was never fond of  
4 getting emergency motions on a Friday afternoon.

5 THE COURT: The Court's always available, so that's  
6 not the problem. My point is just I think Mr. Reiferson has  
7 made a fairly reasonable offer to replace the link on the  
8 survey within, I believe he said minutes, with something that  
9 said, you know, "This survey is closed. Thank you." I think  
10 that's actually a pretty good resolution.

11 It will be reflected in the transcript from this call, a  
12 version of it will probably be reflected in the minute entry,  
13 but I don't know what you're trying to get through this order  
14 thing, but maybe you could help me understand it more fully.

15 MR. SCARBOROUGH: That's fine, Your Honor. I  
16 appreciate the time.

17 THE COURT: All right. So I think we've got it  
18 resolved. Mr. Reiferson, as I understand it, Mr. Scarborough  
19 has accepted your offer to have the link sort of, to use your  
20 phrase, broken. And are you anticipating responding,  
21 Mr. Reiferson, to the motion itself?

22 MR. REIFERSON: Yes, Your Honor.

23 THE COURT: Okay. Well, I will take the matter back  
24 up, then, once we have a response to the motion. Of course,  
25 Mr. Scarborough, you will have an opportunity to reply as

1 well.

2 Anything else I can do at this juncture, Mr. Scarborough?

3 MR. SCARBOROUGH: No, Your Honor. Thank you very  
4 much.

5 THE COURT: Thank you. Mr. Reiferson?

6 MR. REIFERSON: No, Your Honor. Thank you for your  
7 patience.

8 THE COURT: Yeah. And apologies for getting you at  
9 the airport, Mr. Reiferson. I know that's probably not what  
10 you had planned for the afternoon, but --

11 MR. REIFERSON: I appreciate you making time.

12 THE COURT: Very good. Everybody have a good  
13 weekend. Bye.

14 (Proceedings concluded at 4:25 p.m.)

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16 C E R T I F I C A T E

17 - - -

18 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing  
19 is a correct transcript from the record of proceedings in the  
above-entitled matter.

20 /s/ M. Sue Lopreato  
21 M. SUE LOPREATO, RMR, CRR  
22 Official Court Reporter

April 1, 2022

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